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**IN THE
COURT OF APPEALS OF INDIANA**

MOSE T. BOWLING,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee.

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No. 48A02-0512-CR-1240

APPEAL FROM THE MADISON SUPERIOR COURT

The Honorable Dennis D. Carroll, Judge

Cause No. 48D01-0505-FB-155

January 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Following a jury trial, Appellant, Mose Bowling, was convicted of Intimidation as a Class C felony,¹ and Dealing in Cocaine as a Class A felony.² Bowling then pleaded guilty to being an Habitual Offender.³ Upon appeal, Bowling presents two issues for our review: (1) whether the trial court erred in denying his claim that the State's use of its peremptory strikes to exclude three of four potential black jurors from the venire panel violated Batson v. Kentucky, 476 U.S. 79 (1986); and (2) whether the evidence is sufficient to sustain his conviction for Dealing in Cocaine.

We affirm.

In April 2005, Bowling and his nephew, Rahmel Fuller, lived with Bowling's girlfriend, Debra Thacker, and her three teenage daughters at a home in Anderson.⁴ At approximately 11:00 p.m. on the night of April 29, Bowling and Thacker got into an argument about whether Bowling was "cheating" on Thacker. When Thacker attempted to break up with Bowling, Bowling started yelling, screaming, and threatening Thacker, and then physically backed her into a corner in the bedroom. Bowling pulled out a gun; pulled the slide back thereby placing a bullet in the chamber; held the gun to Thacker's head; and told her he was going to kill her. Thacker's daughters came into the bedroom, and Bowling dropped the gun to his side. Bowling eventually withdrew the magazine from the gun, ejected the chambered round, and put the gun down. Persuaded by Thacker

¹ Ind. Code § 35-45-2-1 (Burns Code Ed. Supp. 2006).

² Ind. Code § 35-48-4-1 (Burns Code Ed. Repl. 2004).

³ Ind. Code § 35-50-2-8 (Burns Code Ed. Supp. 2006).

⁴ At the time, Fuller was dating one of Thacker's daughters.

and her daughters, Bowling went to lie down and then fell asleep. Thacker did not call the police because she thought they would work things out when Bowling woke up.

At approximately 5:45 a.m. the next morning, Bowling woke Thacker and told her he was gathering his belongings and that he was moving out. Thacker left the house and went to a Village Pantry and then returned home, thinking Bowling may have calmed down. When Thacker returned, Bowling, thinking Thacker had left to call the police, pulled out his gun and again threatened to kill Thacker and her daughters. Thacker yelled for her daughters and Fuller to get up, get dressed, and get out of the house. Bowling, while waving a gun around and blocking the front door, responded that no one was leaving and that he was going to kill all of them. Eventually, Thacker and her daughters were able to exit the house and walk across the street whereupon Thacker called the police. When an officer arrived, Thacker told him that she wanted Bowling out of the house, and Bowling said that he wanted to gather his belongings and leave. After loading his car, Bowling was permitted to leave.

At some point, Thacker called Detective Kevin Earley of the Anderson Police Department and informed him that Bowling had pointed a gun at her the night before and also that drugs were involved. Thacker knew that Bowling kept crack cocaine in an AOL box that originally belonged to one of her daughters. The night the fight began, Thacker had observed the box in a computer desk in their bedroom. Thacker told Detective Earley that Bowling gave the gun he had pointed at her the night before and the box of cocaine to Fuller, who then left out the back door.

Detective Earley then sought out Fuller at his mother's home and located him walking down the street. Detective Earley stopped Fuller and asked him if he had a handgun on him, and Fuller admitted that he did. Detective Earley placed Fuller in handcuffs and then advised him of his Miranda rights. Detective Earley then removed a box from Fuller's pocket, opened it, and observed inside what he believed to be crack cocaine. Field tests came back positive for the presence of crack cocaine. Fuller explained that when he was leaving Thacker's residence that morning, Bowling gave him the gun and the box containing the cocaine. Fuller further explained that he knew he had the items on him, but that he did not know the box contained crack cocaine until Detective Earley opened it. Fuller was hesitant to tell Detective Earley that Bowling had given him the gun and the box because he did not want to "snitch" on his uncle.

The State charged Bowling with pointing a firearm as a Class D felony, intimidation as a Class C felony, criminal confinement as a Class B felony, and dealing in cocaine as a Class A felony. The State also filed an information alleging Bowling to be an habitual offender. A jury trial was held November 1 through November 3, 2005. During *voir dire*, the State removed three potential black jurors from the jury venire using its peremptory challenges, and Bowling objected upon Batson grounds. The State justified its peremptory challenges of the three jurors, explaining that the challenges were made because each of those potential jurors had a relative who had been convicted of a drug offense. The trial court found the State's reason to be race-neutral and thus found no Batson violation. At the conclusion of the trial, the jury found Bowling guilty of intimidation and dealing in cocaine, and acquitted him of pointing a firearm and criminal

confinement. Bowling then pleaded guilty to the habitual offender allegation. The trial court sentenced Bowling to a total aggregate term of sixty years imprisonment.

Upon appeal, Bowling first argues that the State improperly exercised its peremptory strikes to exclude three of four potential black jurors from serving on Bowling's jury. Bowling argues that he is entitled to a new trial because the State failed to present race-neutral reasons to justify its peremptory strikes.

The exercise of racially discriminatory peremptory challenges is constitutionally impermissible. Batson, 476 U.S. at 89; Wright v. State, 690 N.E.2d 1098, 1104 (Ind. 1997). To establish a prima facie case of purposeful discrimination in the use of peremptory challenges, a defendant must establish that: (1) the State used peremptory challenges to remove members of a cognizable racial group from the jury pool; and (2) the facts and circumstances raise an inference that the prosecutor used those strikes to exclude potential jury members from the jury because of their race. Wright, 690 N.E.2d at 1104. Once the defendant makes the requisite prima facie showing, the burden shifts to the State to provide a race-neutral explanation for the peremptory strike. Id. If the explanation, on its face, is based upon something other than race, the explanation will be deemed race-neutral. Williams v. State, 830 N.E.2d 107, 110 (Ind. Ct. App. 2005), trans. denied. The trial court must then determine whether the party contesting the peremptory challenge has proved purposeful racial discrimination. Wright, 690 N.E.2d at 1104. The trial court's determination as to whether a peremptory challenge is discriminatory is accorded great deference upon appeal and will be set aside only if we determine it to be clearly erroneous. Williams, 830 N.E.2d at 110.

Here, after questioning prospective jurors during *voir dire*, the State used peremptory challenges to exclude Ms. Dean, Ms. Townsend, and Ms. Goe, three of four potential black jurors, from the venire panel. After the jury was selected, but before the jury was sworn, the Deputy Prosecutor was asked to make a Batson record and provide the court with a race-neutral explanation for its challenges to Ms. Dean, Ms. Townsend, and Ms. Goe.⁵ The trial court noted for the record that Bowling was black and that the challenged jurors represented three of four potential black jurors in the venire panel. The court further noted that the fourth back venire member was selected to serve on the jury.

The Deputy Prosecutor explained that he excused Ms. Townsend because she said she had two brothers who had previously been convicted of drug-related crimes and one brother who was still incarcerated. Ms. Dean was excused because she said that she had a brother who had been in and out of the court system and that he had a conviction. Ms. Goe was excused because her son had lost his driver's license after being pulled over and having marijuana found in his car. Although Ms. Goe's son had not been convicted of a crime, the Deputy Prosecutor explained that he was concerned that Ms. Goe might be sympathetic to Bowling given that Bowling was charged with dealing in drugs. The trial court determined that the Deputy Prosecutor provided race-neutral reasons for the peremptory challenges of Ms. Townsend, Ms. Dean, and Ms. Goe.

A juror's prior criminal record, or that of the juror's family, is a valid, race-neutral reason in support of a peremptory challenge. United States v. Evans, 192 F.3d 698, 700-

⁵ Although the trial court did not specifically find that Bowling made the requisite *prima facie* showing, the court implicitly did so when it asked the Deputy Prosecutor to explain his peremptory strikes.

01 (7th Cir. 1999); Douglas v. State, 636 N.E.2d 197, 199 (Ind. Ct. App. 1994). Ms. Townsend, Ms. Dean, and Ms. Goe all stated that they had relatives with prior contacts with the criminal justice system and/or prior convictions. Additionally, potential bias against the State or a concern that a juror may sympathize with the defendant also serve as valid, race-neutral reasons for exercising a peremptory challenge. Wright, 690 N.E.2d at 1105. Here, the State's concern about Ms. Goe was well founded.

Notwithstanding the above authority, Bowling argues that a discriminatory intent underlies the State's explanation in light of the fact that there are more arrests in the black community for drug-related charges, resulting in a higher likelihood that potential black jurors may be excluded from jury venires. As noted by the trial court, the test for determining the constitutionality of a peremptory challenge is not about disparate impact, but rather about the State's motivation. We therefore reject Bowling's argument that the impact of race-neutral peremptory challenges may also establish discriminatory intent. We further note that Bowling does not claim that the State's race-neutral reasons served as merely a pretext for excluding black jurors. See Highler v. State, 854 N.E.2d 823, 828 (Ind. 2006). Indeed, the record would not support such a claim, for, as recognized by the trial court, the Deputy Prosecutor exercised peremptory strikes to exclude all potential jurors who indicated that they had family members with a drug history or any type of criminal conviction. Having reviewed the record, and giving due deference to the trial court's determination, we conclude that the trial court did not err in concluding that the State's exercise of its peremptory challenges did not constitute a Batson violation.

Bowling next argues that the evidence is insufficient to sustain his conviction for dealing in cocaine. When reviewing a challenge to the sufficiency of the evidence, this court will neither reweigh evidence nor judge witness credibility, but instead, considering only the evidence which supports the conviction along with the reasonable inferences to be drawn therefrom, we determine whether there is substantial evidence of probative value from which a reasonable jury could have concluded that the defendant was guilty of the charged crime beyond a reasonable doubt. Kien v. State, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), trans. denied. A conviction may be sustained upon the uncorroborated testimony of one witness. Johnson v. State, 804 N.E.2d 255, 256 (Ind. Ct. App. 2004).

In accordance with the charging information, in order to convict Bowling of dealing in cocaine as a Class A felony, the State was required to prove that Bowling (1) knowingly or intentionally (2) delivered (3) cocaine (4) to another person (5) in an amount weighing three grams or more. See I.C. § 35-48-4-1.⁶

Bowling first argues that the evidence does not prove that he was in possession, either actual or constructive, of the box containing the cocaine. We disagree. At trial, Thacker testified that on the night of the fight she observed an AOL box which she knew Bowling used to store crack cocaine in a computer desk located in their bedroom. The following morning, Thacker contacted Detective Earley and informed him that during the

⁶ Insofar as pertinent here, the offense of dealing in cocaine may be proved by evidence that the defendant knowingly or intentionally manufactured, financed the manufacture of, delivered, or financed the delivery of cocaine or a narcotic drug. Here, the information charging Bowling with dealing in cocaine alleged that Bowling committed the offense by “deliver[ing] at least three (3) grams of cocaine, pure or adulterated, to another person.” Appendix at 15 (emphasis supplied). Bowling was not charged with possession with intent to deliver.

fight between her and Bowling the night before, Bowling had pointed a gun at her and that drugs were involved. After speaking with Thacker about her claim that a gun and drugs were involved, Detective Earley sought out and eventually located Fuller walking down a street. Fuller was found to be in possession of a handgun and an AOL box which contained a substance laboratory tests determined to be 10.47 grams of a combination of procaine and cocaine. Fuller testified that Bowling had given him the handgun and the box containing procaine and cocaine as Fuller was leaving the house the morning of April 30. Additionally, four witnesses testified that they had never known Fuller to possess a handgun or cocaine. From this evidence, the jury could have logically inferred that Bowling was in possession of the cocaine when he intentionally and deliberately handed the box containing the crack cocaine to Fuller as Fuller was leaving the house the morning of April 30.

Bowling's other arguments challenging the sufficiency of the evidence are simply attempts to challenge Fuller's credibility. Indeed, the fact that Fuller was hesitant to name Bowling as the individual who gave him the box containing the cocaine and that Fuller's trial testimony came after he pleaded guilty were circumstances for the jury to consider in assessing Fuller's credibility at trial when Fuller testified that Bowling gave him the box containing the cocaine as he left the house. During his taped statement at the police station the day of his arrest, which was played for the jury, and during his trial testimony, Fuller explained his hesitation, indicating that he did not want to implicate Bowling, his uncle, because he did not want to be a "snitch." Transcript at 219, 230. Upon appeal, this court will not reweigh or re-judge the credibility of the witnesses. The

jury, as the trier of fact is entitled to determine the weight of the evidence, the credibility of the witnesses, and which version of events to credit. Maxwell v. State, 731 N.E.2d 459, 462 (Ind. Ct. App. 2000), trans. denied. Here, the testimony and evidence credited by the jury is sufficient to support Bowling's conviction for dealing in cocaine as a Class A felony.

The judgment of the trial court is affirmed.

ROBB, J., and BARNES, J., concur.